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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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10/692,770

10/24/2003

Christian Zander

7469 US

8945

30078

7590

09/24/2008

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EXAMINER

FEARER, MARK D

ART UNIT

PAPER NUMBER

2143

MAIL DATE

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|----------------------------------------------------------------------------------------------|----------------------------------------------|--------------------------------------------------|--|
| <p align="center">Advisory Action Before the Filing of an Appeal Brief</p> | <p>Application No. 10/692,770</p> | <p>Applicant(s) ZANDER, CHRISTIAN</p> | |
| | <p>Examiner MARK D. FEARER</p> | <p>Art Unit 2143</p> | |

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 29 August 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-16.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Tonia LM Dollinger/
Supervisory Patent Examiner, Art Unit 2143

Continuation of 11. does NOT place the application in condition for allowance because: Under KSR rationale - combining prior art elements according to known methods to yield predictable results:

- (A) Combining prior art elements according to known methods to yield predictable results;
- (B) Simple substitution of one known element for another to obtain predictable results;
- (C) Use of known technique to improve similar devices (methods, or products) in the same way;
- (D) Applying a known technique to a known device (method, or product) ready for improvement to yield predictable results;
- (E) " Obvious to try " - choosing from a finite number of identified, predictable solutions, with a reasonable expectation of success;
- (F) Known work in one field of endeavor may prompt variations of it for use in either the same field or a different one based on design incentives or other market forces if the variations are predictable to one of ordinary skill in the art;
- (G) Some teaching, suggestion, or motivation in the prior art that would have led one of ordinary skill to modify the prior art reference or to combine prior art reference teachings to arrive at the claimed invention. See MPEP § 214.3 for a discussion of the rationales listed above along with examples illustrating how the cited rationales may be used to support a finding of obviousness. See also MPEP § 2144 - § 2144.09 for additional guidance regarding support for obviousness determinations.

Ehrhardt et al. discloses setting up a communication procedure between instances and a protocol tester using the method comprising a communication procedure executable between the instances through the protocol tester based on the several selecting steps, with the communication data selecting step being made graphically ("Accordingly the present invention provides a method of setting up a communication procedure between instances, one of which is a protocol tester, by executing the following steps on the protocol tester: selecting instances that are to take part in the communication procedure; selecting a protocol layer on the basis of the communication procedure; selecting abstract communication interfaces of the protocol layer for the communication procedure; selecting communication data; and automatically setting up through the protocol tester on the basis of the above selections the communication procedure. The selections at any one of the steps may be made graphically with parameters selected being assigned description files that are used in the setting up step.") paragraph 0005) upon which the claimed invention can be seen as an improvement.

Sierer et al. discloses a network-based system for configuring a measurement system using software programs generated based on a user specification comprising the possibility of selecting from a plurality of functionalities ("For example, a measurement device may have a programmable hardware element that is configurable using the program(s). The user may choose to deploy the hardware configuration program(s) to various devices, e.g., using a GUI based configuration diagram.") paragraph 0044), each functionality being allocated a graphic representation and a description file ("In one embodiment a description file may be generated which identifies resources and features the task requires or that the user has selected. From this description file, G code (graphical code, e.g., National Instruments G graphical programming language) may be generated.") paragraph 0226), and a display form correlating with the additional functionality on a display on which it may be selected ("Thus, by performing the method described above, a user may specify a task, such as over a network, a server may generate a graphical program from the user-specified task specification and send the graphical program to the client, then the client may, if necessary, convert the graphical program to an executable form. The executable program may then be run by the measurement system to perform the specified task.") paragraph 0273).

Thus, the manner of enhancing a particular device (a network-based system for configuring a measurement system using software programs generated based on a user specification comprising the possibility of selecting from a plurality of functionalities, each functionality being allocated a graphic representation and a description file, and a display form correlating with the additional functionality on a display on which it may be selected) was made part of the ordinary capabilities of one skilled in the art based upon the teaching of such improvement in Sierer et al. Accordingly, one of ordinary skill in the art would have been capable of applying this known improvement technique in the same manner to the prior art setting up a communication procedure between instances and a protocol tester using the method comprising a communication procedure executable between the instances through the protocol tester based on the several selecting steps, with the communication data selecting step being made graphically of Ehrhardt et al. and the results would have been predictable to one of ordinary skill in the art, namely, one skilled in the art would have readily recognized selecting functionality of a protocol tester.